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(1921-2000)

August 17, 2005

DELIVERED BY HAND

The Honorable Charles L. A. Terreni
Executive Director
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996
Docket No. 2005-67-C
Our File No. 05-7010

Dear Mr. Terreni:

Enclosed are the original and sixteen copies of the Post-Hearing Brief on behalf of MCImetro Access Transmission Services, LLC, along with a proposed Order. Would you please file the original, returning a clocked copy to me. Thank you for your assistance.

By copy of this letter I am serving all counsel of record.

Very truly yours,

WOODWARD, COTHRAN & HERNDON

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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996	)	Docket No. 2005-67-C

POST-HEARING BRIEF OF MCI

MCImetro Access Transmission Services, LLC ("MCI") submits its post-hearing brief following hearing of its Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") and other law, of certain terms and conditions of proposed interconnection agreements between MCI and Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Co., Inc., and PBT Telecom, Inc. (collectively, "the RLECs"). For the reasons stated, the South Carolina Public Service Commission ("Commission") should approve the terms and conditions proposed by MCI[1] for its interconnection agreements with the RLECs.

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1 See the attached Appendix for reference to MCI's proposed terms and conditions.

I. THE RLECS MAY NOT LAWFULLY REFUSE TO INTERCONNECT WHEN MCI SEEKS TO PROVIDE TELECOMMUNICATIONS SERVICES TO TWCIS AND TO EXCHANGE TRAFFIC THAT ORIGINATES WITH TWCIS

(Serving Customers Directly Vs. Indirectly: Issues #6, #10(a), #15, #17)

MCI seeks to provide telecommunications services to Time Warner Cable Information Systems, Inc. ("TWCIS"), and to pass traffic to the RLECs in standard public-switched telephone network ("PSTN") format that originates with TWCIS. T. 218, 230. The RLECs nowhere point to any statute, rule or order that specifically and expressly justifies the RLECs' refusal to interconnect so that MCI may provide these services and exchange such traffic. The RLECs propose definitions that have no basis in law; e.g., by limiting MCI to those services provided "directly" to its own "end user" customers.

Because TWCIS needs to reach premises not served by its network and provide E911 (i.e., access via the PSTN to public safety answering points) for its customers, MCI requests interconnection. T. 122. In addition to interconnection and E911, MCI would provide TWCIS with circuit switching, transport, number portability and directory assistance. These are "telecommunications services," for which the Telecommunications Act of 1996 ("Act") expressly requires the RLECs to interconnect. E911 is mandated by the Federal Communications Commission ("FCC") as a public safety concern.[2] By attempting to limit the scope of interconnection, the RLECs seek to prevent MCI from serving TWCIS. Moreover, the RLECs, several of whose affiliates provide services which, like TWCIS' service, use internet protocol ("IP"), also seek to prevent competing

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[2] *In the Matters of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116 (rel. June 3, 2005).

providers, including TWCIS, from entering the RLECs' areas to provide facilities-based services. As a result, the RLECs seek to limit the choices of residential consumers in their territories for wireline service, including voice-over-internet protocol ("VoIP"), to the RLECs' own products. T. 122-23, 126-27, 161, 218-19, 221, 230, 233.

The parties do not disagree whether any rural exemption applies, since no purported exemption has been asserted pursuant to 47 U.S.C. §251(f) or any other law. See T. 106-10, 171, 251. The parties do not fundamentally disagree about the characterization, for purposes of intercarrier compensation, of traffic that is not internet service provider ("ISP")-bound. For purposes of this proceeding MCI has agreed to treat all non-ISP-bound traffic, including all such traffic that is VoIP or otherwise IP-enabled, the same as other non-ISP telecommunications traffic; i.e., for such traffic, intercarrier compensation will be based on the physical location of the end points of the call. As stated in the contract language concerning issue #13, for such traffic deemed "local," "bill and keep" rather than reciprocal compensation shall govern, assuming the traffic is not "out-of-balance."[3] If such "local" traffic is "out of balance," MCI proposes that reciprocal compensation be paid. For non-ISP-bound calls that, based on the end points of the call, are deemed to be intraLATA "toll" traffic, MCI has agreed to "bill and keep" rather than access charges, if, as proposed by MCI, traffic is not "out of balance." If intraLATA "toll" traffic is "out of balance," MCI would accede to access charges. MCI has also committed to provide required signaling parameters and to utilize separate local and toll trunk groups for the exchange of such traffic, thereby enabling the RLECs to accurately apply access charges to traffic. T. 124-25, 192.

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[3] "Out of balance" traffic occurs when one party terminates more than 60% of total "local" traffic exchanged between the parties. See Appendix, issue #13.

Nor is the parties' disagreement, strictly speaking, a dispute over what services TWCIS provides, how it characterizes its services, or even about the nature or regulatory treatment of TWCIS or VoIP service.[4] T. 126-27, 134, 182. There is no question that TWCIS originates calls in IP.[5] T. 123-24, 232. Because the RLECs in any event do not contend that TWCIS is not offering "telecommunications services," T. 231-32, they

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[4] Lack of certification by a state commission is not a basis upon which to lawfully refuse to negotiate or arbitrate an interconnection agreement. *In The Matter Of Implementation Of The Local Competition Provisions In the Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, 95-185, First Report and Order, FCC 96-325, 1996 WL 452885 (F.C.C.), 11 F.C.C.R. 15,499, 11 FCC Rcd. 15,499, 4 Communications Reg. (P&F) 1, ¶ 154 ("Local Competition Order"). See *In re: Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Interexchange and Local Voice Services in Service Areas of Certain Incumbent Carriers who Currently have a Rural Exemption*, Docket No. 2004-280-C, Order Ruling on Expansion of Certificate, pp. 5-6 (certification not needed to engage in the section 252 negotiation and arbitration process). MCI does not endorse the Commission's ultimate rulings in that docket.

[5] There also is no question that the FCC has jurisdiction over VoIP. During 2004, the FCC issued three major orders on the classification of IP-enabled services. In the first case, the FCC ruled that Pulver.com's Free World Dialup service, which is a computer-to-computer service, is an "unregulated interstate information service." *In the Matter of Petition o Declaratory Ruling that Pulver.Com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27, 2004 WL 315259 (F.C.C.), 19 F.C.C.R. 3307, 19 FCC Rcd. 3307, 31 Communications Reg. (P&F) 1341 (rel. February 19, 2004). Next, the FCC denied AT&T's request for a declaratory ruling that access charges do not apply to its "phone-to-phone" IP telephony service, which employs VoIP transport to connect two users on the circuit-switched PSTN. *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361, Order, FCC 04-97, 2004 WL 856557 (F.C.C.), 19 F.C.C.R. 7457, 19 FCC Rcd. 7457, 32 Communications Reg. (P&F) 340 (rel. April 21, 2004). Subsequently, the FCC preempted the Minnesota Public Utilities Commission and other state commissions from regulating services like Vonage's DigitalVoice Service, which is an IP-PSTN or PSTN-IP service. *In the Matter of Vonage Holdings Corporation Petition for Declaratory Relief Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket 03-211, Memorandum Opinion and Order, FCC 04-267, 2004 WL 2601194 (F.C.C.), 19 F.C.C.R. 22,404, 19 FCC Rcd. 22,404, 34 Communications Reg. (P&F) 442 (rel. November 12, 2004). The FCC, however, referred the question whether such similar IP-enabled services should be classified as unregulated "information services" or regulated "telecommunications," to its IP-Enabled Services proceeding (WC Docket No. 04-36, referred to *supra*). The decision on those issues in that proceeding has not yet issued. Also, the FCC did not state in its *Vonage* decision what this type of traffic is (i.e., "telecommunications services" or "information services"), or that jurisdiction would be determined by the physical location of the customer. The issue whether cable modems are an "interstate information service", or whether cable modem service is a "telecommunications service" or has a "telecommunications component," was recently decided by the U.S. Supreme Court in the *Brand X* case. *National Cable & Telecommunications Assoc. v. Brand X Internet Services, et al*, 545 U.S. ___, 125 S.Ct. 2688, 05 Daily Journal D.A.R. 7749, 18 Fla. L. Weekly Fed. S 482, 05 Cal. Daily Op. Serv. 5631, 36 Communications Reg. (P&F) 173, 73 USLW 4659 (June 27, 2005). T. 135.

cannot attempt to limit interconnection on the basis that TWCIS is providing a non-telecommunication service (i.e., "information services"). Further, even if the RLECs could maintain such a distinction, they would have no legal basis upon which to effectively deny interconnection. 47 C.F.R. §51.100 provides:

> A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

The fact that some IP-originated traffic may be provided "through the same arrangement" does not excuse the RLECs from interconnecting for the purposes MCI intends. T. 181-82.

Nor could the RLECs maintain straight-faced that interconnection may be denied on the basis of the type of service TWCIS provides. IP is being used by many carriers, even by the RLECs' affiliates, to efficiently transport, as well as originate and terminate, transmissions of voice, data and video. Hargray Telephone Company's ("Hargray's") affiliate provides VoIP service to Hargray's customers. This VoIP product, like Vonage's service (but unlike TWCIS' service), is "mobile" in the sense that a resident of South Carolina may use the service anywhere in the United States. It is unlikely that Hargray's affiliate has an interconnection agreement with the carrier or cable provider where the IP-enabled call first enters the PSTN, or even that such provider knows that Hargray's affiliate is using its network to originate a call. As explained in Hargray's video,[6] a VoIP call from Pittsburgh to Savannah is a "local call for everyone involved." As further demonstrated by the terms of their interconnection agreements with other

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6 MCI Hearing exhibit 1 (GJD exhibit 2).

carriers, the RLECs and their affiliates are exchanging VoIP-originated traffic with other carriers,[7] and undoubtedly already exchange such traffic with MCI. T. 135-36. Hargray's affiliate undoubtedly must procure and port NPA-NXX codes for its VoIP service to enter the PSTN, and these NPA-NXX codes are probably associated with Hargray's "local" calling area. As such, Hargray is apparently using its VoIP service to bypass interstate and intrastate access charges, or, at least, is basing intercarrier compensation on NPA-NXX codes not associated with geographic location.

Consequently, it is disingenuous for the RLECs to argue that other local exchange carriers not be permitted to exchange traffic that originates as VoIP.[8] Indeed, the parties have already settled on the following language:

> The Parties disagree on the regulatory treatment of VoIP/IP-Enabled services. The Parties will incorporate FCC rulings and orders governing compensation for VoIP/IP-Enabled services into the agreement once effective. Until such time, for the purposes of this agreement, VoIP/IP-Enabled traffic will be treated similarly to other voice traffic covered by this agreement, and the originating point of VoIP/IP Enabled traffic for the purpose of jurisdictionally rating traffic is the physical location of the calling party, i.e. the geographical location of the IPC.[9]

Hence the concession MCI has offered - to treat all non-ISP-bound traffic the same for intercarrier compensation purposes - places its and TWCIS' VoIP services at a significant competitive *disadvantage* versus the services Hargray and its affiliates offer. T. 194.

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7 The Home Telephone Company's ("Home's") affiliate's interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"), attachment 3, section 8.1.6, states that the traffic exchanged should include "all traffic, regardless of the transport protocol method." T. 182. Hargray's affiliate's interconnection agreement with BellSouth is silent as to whether the affiliate will pass VoIP to BellSouth. See MCI Hearing exhibit 1 (GJD exhibit 2). See T. 350 (judicial notice taken of these and other interconnection agreements).

8 Section 2.23 of the parties' interconnection agreement also describes an "interexchange carrier" as "(a) telecommunications carrier that provides, directly or indirectly, InterLATA or IntraLATA telephone toll services." T. 120-21.

9 Section 1.6 of the interconnection attachment of the parties' interconnection agreement.

Therefore, although much attention has focused on the nature of the traffic as originated with TWCIS, the question, if interconnection can be lawfully limited in any respect, is what services *MCI* seeks to provide and to exchange with the RLECs. Those services, as discussed above, are classic "telecommunications services." 47 U.S.C. §153 (46) states:

> The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

TWCIS, like other users of telecommunications, including business, individual and governmental users, is a member of "the public." Moreover, by making telecommunications available to TWCIS, which will then use those services to provide services to its end users, MCI is undeniably providing telecommunications "to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

Further, the services to be provided by MCI under the agreement are not limited to those for the benefit of TWCIS. This is not an instance in which MCI seeks interconnection to provide services solely for any customer.[10] MCI's contract with TWCIS is no different than the individually-negotiated contracts that carriers have with other customers. MCI would like to offer its services to others. MCI also seeks to serve end user customers "directly" as well, including its ISP customers. T. 185, 220-21.

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[10] As the Commission stated in its July 20, 2005 Order Denying Petition for Rehearing or Reconsideration in this docket, "[w]hereas some of the issues may certainly have been related to the service of TWCIS customers through MCI, it appears to this Commission that the issues also had general applicability to the service of other customers as well." pp. 4-5. MCI does not endorse the Commission's conclusion denying intervention.

With regard to the definition of "telecommunications," which is part of the definition of "telecommunications services," 47 U.S.C. §153 (43) states:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

There will be no change to the "form or content of the information" to be sent by MCI to the RLECs, or when information is received by MCI from the RLECs. T. 183. Indeed, as the RLECs admit, the Act does not limit the purpose of interconnection to providing services "directly" to "end users." T. 37, 235. The Act does not even employ the term "end users;" instead, the term employed is "users." For example, 47 C.F.R. §52.21(q) applies to the "ability of users of telecommunications services" to port numbers; significantly, the reference in the rule is to "users," not "end users." The term "users" as employed by the Act is broad, and includes "users" like TWCIS, as one sees from the phrase in 47 U.S.C. §153 (46), "or to such classes of users as to be effectively available".

As discussed above, the RLECs' affiliates have entered into interconnection agreements with BellSouth to provide service in its territory. T. 69, 171, 228-29. These agreements, like the interconnection agreements MCI has entered into with other ILECs, provide the same or similar terms to what MCI is requesting here: i.e., that no distinction be drawn for providing service "directly" to end users. Moreover, in several places the RLECs' affiliates' interconnection agreements with BellSouth expressly permit the exchange of traffic generated by third parties.[11] T. 110, 186.

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[11] See MCI Hearing exhibit 1 (GJD exhibit 2); specifically, Hargray's affiliate's interconnection agreement with BellSouth, Attachment 3, sections 9.3, 1.9.2 and 1.10; Home's affiliate's agreement with BellSouth, attachment 3, section 3.1 and 5.2; and PBT's agreement with BellSouth attachment 3, section 1.9.2, 1.10 and 8.3.

Given these circumstances, the RLECs apparently concede that 47 U.S.C. §251(a) requires them to interconnect with MCI for its provision of services to TWCIS. T. 223. The RLECs, however, contend that they are not required to *exchange* traffic with MCI, by virtue of 47 U.S.C. §251(b). The RLECs' contention is patently absurd; interconnection without the ability to exchange traffic is illogical and would be a nullity. Thus section 251(b) of the Act refers to obligations of local exchange carriers, including the exchange of traffic with other local exchange carriers. Contrary to the RLECs' contentions, section 251(b) does not indicate that the obligation to interconnect does not apply if a contracting carrier seeks to provide services to carrier customers. T. 180-82.

The *Atlas* decision,[12] which the RLECs cite as authority for their position, is inapposite. See T. 242-43. In that case, a sham entity was created to terminate long distance calls, while charging high access charges. Neither local exchange traffic nor compensation for terminating local traffic was involved. The sham entity had one customer, a "chat room." Nothing in *Atlas* requires a "direct contractual relationship" between the RLECs and TWCIS.

The RLECs cite paragraph 1034 of the Local Competition Order. That order, however, in discussing reciprocal compensation, "in which two carriers collaborate to complete a local call," does not state or imply that two carriers cannot collaborate to complete a local call that originates on a third party's network, or that carriers are limited in what types of customers they serve. The RLECs also cite 47 C.F.R. §51.701(e),

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12 *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc., v. AT&T Corp.*, File No. E-97-003, 16 F.C.C.R. 5726, Memorandum Opinion and Order, FCC01-84 (rel. March 13, 2001).

which refers to compensation paid by one carrier to another carrier "for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier." Nothing in the rule, however, limits its application to traffic "directly" generated by the interconnecting carrier's customers. Indeed, the term "telecommunications traffic that originates on the network facilities of the other carrier" does not, as the RLECs imply, exclude an obligation to interconnect for the purpose of exchanging traffic that originates as IP.[13] Moreover, "telecommunications traffic" is not defined by the FCC's regulations. "Telecommunications," however, is defined, and "means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. §153(43). As discussed above, MCI does not change the "form or content of the information."

Failing, then, to find that the Act *prohibits* interconnection for the purpose of providing services to another carrier, the RLECs attempt to turn the Act on its head, and contend that there is no specific authority therein for MCI *to* interconnect for the purpose of providing services to or exchanging traffic from another carrier. But the fact that MCI connects its network with another carrier, i.e., TWCIS, does not prevent MCI's interconnection with the RLECs. If it did, no carrier could interconnect for the purpose of providing, for example, wholesale services to other carriers, or to provide a transiting function, or to provide exchange access. T. 57-58, 161, 181-82, 219, 227, 241. These are services for which interconnection is permitted under the Act. T. 58.

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[13] See 47 C.F.R. §51.100(b), discussed *supra*. Indeed, as discussed below with reference to ISP-bound traffic, there is no limitation that interconnection arrangements carry merely "local" traffic. While MCI has voluntarily agreed not to do so with its arrangements with these RLECs, interLATA and IntraLATA traffic can be put on local interconnection trunks.

Such "indirect" service arrangements are not only authorized under the Act, but are necessary for network engineering; otherwise, each local exchange carrier would have to connect with every other local exchange carrier. T. 121, 125. Such a requirement of "direct" interconnection would not only be impracticable, it would significantly drive up the costs of entry, frustrate Congress' intent to reduce entry barriers, and hamper rather than facilitate local competition. The Act was enacted to "provide for a pro-competitive, de-regulatory national policy framework" by "opening all telecommunications markets to competition." Accordingly, the RLECs' attempt to restrict interconnection traffic to traffic to and from end users of the interconnecting parties is not sustainable under policy or law. T. 186, 219.

In recent cases before the Ohio, New York and Illinois utilities commissions, arguments similar to those of the RLECs have been utterly rejected. Rural ILECs in Ohio unsuccessfully contended that MCI did not meet the requirements of section 153 of the Act because MCI was not offering services "directly" to the public. The Ohio Public Utilities Commission declared:

> 47 U.S.C. [paragraph] 153(a) (1) and (c) (2) require [the ILECs] to interconnect with other `telecommunications carriers' and that 47 U.S.C [para] 153 defines a `telecommunications carrier' as `any provider of telecommunications services.' The Commission also observes, as do [the ILECs], that the 47 U.S.C. [para] 153 definition of `telecommunications service,' is `the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of facilities used.' Applying this definition to MCI and its [bona fide request to interconnect], the Commission notes that MCI will doubtless collect a fee for providing telecommunications via interconnection with [the ILECs]. Further, MCI's arrangement with Time Warner will make the interconnection and services that MCI negotiates with [the ILECs] 'effectively available to the public, regardless of the facilities used.'[14]

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[14] Order on Rehearing, *In the Matter of the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., The Germantown Independent Telephone CO, and Doylestown Telephone Co.*, ¶15, p. 13 (April 13, 2005).

Likewise, the New York Public Service Commission rejected the same arguments raised by the RLECs. In that case ILECs argued that section 251(b) of the Act does not require them to interconnect with Sprint, which had entered into a business arrangement with TWCIS to offer voice service in competition with the ILECs. The ILECs similarly attempted to limit the definition of "end user" to only the end users of Sprint. As in the Ohio decision, the New York commission found that Sprint's agreement to provide TWCIS with interconnection, number portability, order submission, E911 and directory assistance, among other services, meets the definition of "telecommunications services:"

> While Sprint may act as an intermediary in terminating traffic within and across networks, the function that Sprint performs is no different than that performed by other competitive local exchange carriers with networks that are connected to the independents. Sprint meets the definition of "telecommunications carrier" and, therefore, is entitled to interconnect with the independents pursuant to section 251(a). We find unpersuasive the independents' claim that their section 251(b) duties as local exchange carriers are not triggered because Sprint is not an ultimate provider of end user services.[15]

Last month the Illinois Commerce Commission rejected the hearing officer's recommendation upon which RLECs relied in their pre-filed testimony. The Illinois commission's decision[16] concerned Sprint's efforts to interconnect with rural ILECs, to provide services to the affiliate of a cable provider. Sprint's services are similar to those provided by MCI to TWCIS. Arguing that Sprint is not providing telecommunications

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15 *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, Case 05-C-0170, Order Resolving Arbitration Issues, p. 5 (May 18, 2005). T. 184-85.

16 *Cambridge Telephone Company, et al, Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief*, 05-0259, etc., Order (July 13, 2005). A copy of this order is attached.

services and is not a "common carrier,"[17] the ILECs contended that Sprint is a "private carrier" that, under the *Virgin Islands Telephone* decision,[18] is not entitled to interconnection. The Illinois commission, however, found that Sprint "does indiscriminately offer its services to a class of users so as to be effectively available to the public."[19] The Illinois commission also found that Sprint does not alter the content of voice communications by end users. Significantly, the Illinois commission also rejected the analysis of the Iowa Utilities Board,[20] upon which the RLECs rely.

Specifically with regard to porting (issue #17), MCI has been able to reach negotiated agreements with many other independent ILECs that incorporate MCI's proposed number portability language. There is no legitimate reason why MCI's proposed language is not reasonable in this case as well. T. 187. Here, however, the RLECs seek to impose several conditions that are unjustified by law or policy:

First, the RLECs want to restrict porting to the "same type of" service that the end user (whose number is being ported) previously had; i.e., "telecommunications services." T. 245. The RLECs, however, as previously discussed, are not prepared to say that what TWCIS originates is *not* telecommunications services, see T. 260, and Hargray's affiliate's VoIP necessarily must rely on ported numbers, which, presumably, the affiliate

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17 47 U.S.C. 153 (10) states:

> The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

18 *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

19 *Cambridge Telephone Company, et al, supra*, at p. 12.

20 *In re Arbitration of Sprint Communications Company, L.P. v. Ace Communications Group, et al.*, Docket no. arb-05-2, Order Granting Motions to Dismiss, (May 26, 2005)

obtains from Hargray. T. 73. Not only is the restriction urged by the RLECs not found in the Act; the RLECs contradict themselves by admitting that, for example, wireline to wireless porting is acceptable. T. 245. Moreover, whether or not a TWCIS end user receives "telecommunications service" from TWCIS is a question within the FCC's jurisdiction. It is not within the Commission's jurisdiction to conclude that TWCIS does not offer telecommunications service. Thus the premise upon which the RLECs base their argument is flawed.

Second, the RLECs want to restrict the use of the ported number to the same location. Ironically, the way Hargray's affiliate provides its VoIP service violates this criterion, since its numbers are not associated with the pre-port location, but may become "mobile." T. 60. Further, although the RLECs' second criterion is not found in the Act, the manner in which MCI and TWCIS plan to engage in number portability will result in the same end user retaining the number both before and after the port. He or she also will remain in the same location before and after the port. See T. 244.

Third, the RLECs question whether MCI or TWCIS would port numbers to other carriers. This statement is irrelevant as well as misplaced. As is the case with any interconnecting carrier, MCI is obligated to provide dialing parity and local number portability. The latter applies when, for example, a TWCIS end user's telephone number is ported to the RLECs. The systems used by the industry, including by MCI (for TWCIS), are not dependent on any such release of the number by the current or "losing" provider of service, and MCI (for TWCIS) would not prevent the end user from moving to another provider. T. 188.

Finally, the RLECs also suggest that "the end user must be switching from a telecommunications carrier to another telecommunications carrier." In this regard, and as discussed above, MCI *is* a telecommunications carrier; hence the end user is switching telecommunications service from one telecommunications carrier to another telecommunications carrier (i.e. from the RLEC to MCI).

The FCC has already gone one step further than what MCI is requesting and, in its *SBCIS* order,[21] has directed ILECs to provide telephone numbers directly to a VoIP provider. The FCC therein stated: "To the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this Order." Further, the FCC did not condition granting similar waivers on completion of its "request" that the North American Numbering Committee "review whether and how our numbering rules should be modified to allow IP-enabled service providers access to numbering resources in a manner consistent with our numbering optimization policies."[22]

As MCI also noted in its petition, the FCC does not condone ILEC efforts to block VoIP traffic.[23] The RLECs' efforts to restrict number portability for third parties

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21 *In the Matter of Administration of the North American Numbering Plan, CC Docket 99-200, Order*, FCC 05-20, 2005 WL 283273 (F.C.C.), 20 F.C.C.R. 2957, 20 FCC Rcd. 2957 (rel. February 1, 2005 ("SBCIS Order"). In this Order the FCC granted SBCIS waiver of 47 C.F.R. §52.15(g)(2)(i) so that SBCIS did not have to obtain an interconnection agreement in order to obtain numbers for its customers.

22 SBCIS Order, at ¶11, p. 7. The FCC also noted that:

> a few commenters urge the Commission to address SBCIS's petition in the current *IP-Enabled Services* proceeding. We decline to defer consideration of SBCIS's waiver until final numbering rules are adopted in the *IP-Enabled Services* proceeding. The Commission has previously granted waivers of Commission rules pending the outcome of rulemaking proceedings, and for the reasons articulated above, it is in the public interest to do so here. Id.

23 See *In the Matter of Madison River Communications, LLC and affiliated companies,* File No. EB-05-IH-0110, Order, DS 05-543, 2005 WL 516821 (F.C.C.), 20 F.C.C.R. 4295, 20 FCC Rcd. 4295 (rel. March 3, 2005).

should likewise be rejected as an illegal effort to block Time Warner's VoIP business and MCI's local exchange competition. T. 188-89. Recently, the FCC made it clear that it would not tolerate discrimination among different landline porting of telephone numbers. Responding to comments from Time Warner Cable and others, the FCC stated:

> We take this opportunity to remind carriers that the Act requires [citing 47 U.S.C. 251(b)(2)] and we intend to enforce, non-discriminatory number porting between LECs, including our previous conclusion 'that carriers may not impose non-porting related restrictions on the porting out process.' Because of these requirements, when an incumbent LEC receives a request for number portability, it is required to observe the same rules, including provisioning intervals, as any other LEC and cannot avoid its obligations by pleading non-porting related complications or requirements such as the presence of DSL service on a customer's line. We also retain the authority to evaluate specific objections to incumbent LEC's porting policies in proceedings seeking enforcement action.[24]

This order dealt with the situation in which there has been delay in porting a customer served by the ILEC's DSL service to service provided by a cable modem.

Therefore, the FCC is not delaying access to numbers until final numbering rules for IP-enabled Services are developed. There are no applicable restrictions on telecommunications carriers, such as MCI, that would block it from issuing orders to port numbers under current industry standards. The Commission should see through the RLECs' contrived arguments, and accept MCI's proposed language. T. 127-30, 244.

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[24] (sic) (footnotes omitted.) *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers* ,WC Docket No. 03-251, Memorandum Opinion and Order and Notice of Inquiry, 05-78, 2005 WL 704118 (F.C.C.), 20 F.C.C.R. 6830, 20 FCC Rcd. 6830, 35 Communications Reg. (P&F) 1063, ¶36 (rel. March 25, 2005). In a separate statement, Commissioners Michael Copps and Jonathan Adelstein emphasized:

> We join today's decision, however, in one key aspect. We support the effort in this action to reinforce non-discriminatory number porting, including between wireline and cable carriers. Congress was clear that number portability is a basic duty of local exchange carriers. Because this decision accurately clarifies this requirement, we approve in part.

II. ISP-BOUND TRAFFIC USING VIRTUAL NXX SHOULD BE TREATED LIKE OTHER ISP-BOUND TRAFFIC

(ISP-Bound Traffic/Virtual NXX: Issues #8, #10(B), #13)

MCI plans to interconnect at the RLECs' switches. MCI will then transport the call that originates with an RLECs' end user, to MCI's switch, using MCI's facilities. If the call is destined to be transmitted to an ISP, MCI will then send the call to the ISP's modem banks, using MCI's facilities. T

This group of issues is unrelated to providing service to Time Warner; for purposes of this proceeding, MCI will use "virtual NXX"[25] in a limited respect, i.e., only for users to make local calls to ISPs. MCI will not assign virtual NXX codes, as a result of this proceeding, to TWCIS customers. T. 151. By using "virtual" NXX codes, MCI can provide ISPs with a number that is a "local" call to the end user, thus providing an alternative, particularly to those end users still using dial-up Internet service, to the use of the RLECs' broadband and dial-up products. T. 159, 161, 276. This alternative is particularly important since CLECs, or their ISPs, cannot collocate their modem banks at the RLECs' central offices, but rather, typically must locate modem banks at locations outside the RLECs' territories. T. 265.

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[25] NXX codes are comprised of the fourth through the sixth digits of a ten digit telephone number. These codes are used to identify rate centers. "Virtual" NXX allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located. As far as the person calling the number may be concerned, the call is local; however, the person answering the call is actually located physically somewhere else in the LATA. Virtual NXX is similar to "foreign exchange" ("FX"), although there are some technical differences between them. *In re: Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, Order on Arbitration, Order No. 2001-045 (January 16, 2001), pp. 4-5 ("*Adelphia*"). ILECs also use virtual NXX codes. T. 346.

The FCC, in its *ISP Remand Order*,[26] assumed jurisdiction to determinate compensation between carriers for calls to ISPs. Specifically, the FCC describes such calls as "interstate access service." In its *ISP Remand Order*, the FCC rejected the analogy, upon which RLECs rely, of ISP-bound traffic to calls to pizza parlors, T. 41, 50, 210, because ISP-bound calls do not terminate locally. The FCC instead found that calls terminate (often numerous times during any given call) at the end points of the calls; i.e., not at an ISP's modem banks, but at servers that are interstate-located and, indeed, internationally-located. Thus the FCC concluded that ISP-bound traffic is "largely interstate." Such traffic is subject to compensation under 47 U.S.C. §251(g), rather than to reciprocal compensation for the termination of local calls under 47 U.S.C. §251(b)(5), and is not at all subject to the access charge regime. T. 282-83, 286-87, 299. The *ISP Remand Order* determined that the rate would be $.0007 per minute. Thereafter, the *Core* order[27] removed the rate and volume caps for such traffic and made that rate permanent.

The RLECs agree that if the ISP's modem banks are *physically* located within the geographic area for which a call between the starting point of the call and the modem would be considered "local," the carrier serving the ISP is entitled to compensation for the transport and termination of the call. Concomitantly, the RLECs also agree that

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26 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, CC Docket No. 96-98, Order on Remand and Report and Order, FCC 01-131, 2001 WL 455869 (F.C.C.), 16 F.C.C.R. 9151, 16 FCC Rcd. 9151 (rel. April 27, 2001), remanded but not vacated, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

27 *In The Matter Of Petition Of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application Of The ISP Remand Order*, WC Docket No. 03-171, Order, DA 04-1764, 2004 WL 1403331 (F.C.C.), 19 F.C.C.R. 11,075, 19 FCC Rcd. 11,075 (rel. June 23, 2004) (hereinafter, the "*Core*" order or "CoreCom.")

pursuant to the *ISP Remand Order* the carrier whose customer originated the call is not entitled to originating access charges.

The dispute concerns what should occur when the modem banks are physically located outside the geographic area for which a call between two end points within that area would be considered "local." Such a call is unquestionably "interstate" under the FCC's analysis. For such calls, there is no difference in the interconnection arrangement so far as the RLEC's facilities and MCI's interconnection with them are concerned; the point of interconnection (where the responsibility for costs is established) remains at the RLECs' central offices. Thus the RLECs assume no additional costs when the modem banks for MCI's customers are located outside the geographic "local" area. And just as when the modem banks are physically located in the same area as the caller, the customer who calls the ISP considers the call to be "local." In either event the caller is billed as a "local" call. T. 278-81.

In the RLECs' view, therefore, compensation to the carrier serving the ISP would be payable at the $.0007 rate only if the modem is physically located within the geographic scope of the "local" area. Notwithstanding the "interstate" nature of the call, a call to such a modem would not be treated as a long distance call and access charges would not apply. T. 288-89. If the modem, however, happens to be physically located outside the geographic "local" area of the caller, then, even with no change in the interconnection arrangement, the RLECs would deny compensation to the carrier serving the ISP, and instead demand access, at $.01 per minute (for intrastate access) or more (for interstate access). Payment of access to the RLECs effectively ensures their hold over

internet access, since CLECs cannot under those circumstances compete for customers in the RLECs' territories. T. 280, 292-93, 295.

There is nothing, however, in the *ISP Remand Order* that indicates that the FCC considered "local" calls to ISPs whose modem banks are outside the caller's "local" area to be beyond the scope of the FCC's jurisdiction, not subject to the FCC's compensation regime, or subject to access charges. The references in the *ISP Remand Order* to calls within "a local calling area" do not, ipso facto, demonstrate that the FCC intends to treat calls to ISPs with local NPA-NXX codes differently, depending on where the ISP's modem banks are located. See *ISP Remand Order* at ¶1 ("we reaffirm our previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the [Communications Act of 1934, as amended]"). "Local calling area" is a term used by the FCC to denote calls which, while "local" to the caller because of the NPA-NXX dialed, remain nevertheless "interstate" for purposes of jurisdiction and the FCC's unique compensation regime for ISP-bound traffic. T. 288, 298.

Moreover, it would have been absurd for the FCC to have delimited treatment of ISP-bound traffic to calls to ISP modem banks within the caller's geographically "local" area, when the end points of the call are interstate and international. Yet this is exactly the illogic in which the RLECs engage, in arguing that the FCC did not assume regulation of ISP-bound traffic when the modem is located physically outside the local calling area.[28] T. 41-42, 209-10. There is no meaningful distinction to be drawn based on

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[28] The RLECs contend that a court has "recognized" that the *ISP Remand Order* applies only to calls made to modems physically located in an area served by a local call. As a means to synopsize the ISP Remand Order on appeal, the D.C. Circuit simply referred to the order as compensation "provisions" of the

location of the modem banks, and it would have been absurd for the FCC to have done so, given the goals of encouraging interconnection and the growth of advanced services, as well as given the "interstate" nature of ISP-bound traffic.[29]

Nor is there any evidence the FCC considered compensation for ISP-bound calls to harm the access charge regime when the CLEC's modems are physically located outside the local calling area. It is particularly troubling that the RLECs make such an argument, when they offer broadband and dial-up internet access, and when use of their affiliates' Vonage-type product cannot possibly result in accurate determination of the end points of the call for intercarrier compensation. T. 161-62, 209, 212.

In its *Adelphia* decision,[30] the Commission determined the compensation regime applicable to virtual NXX generally. That decision, however, did not specifically concern calls to ISPs,[31] and was issued before the FCC assumed jurisdiction and determined the compensation for such calls in its *ISP Remand Order*. T. 267. Subsequent

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FCC applicable "only to calls made to [ISPs] located within the caller's local calling area." *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). There was no question before the court as to the scope of the FCC's intended compensation "provisions" and the court's shorthand characterization was not intended as a ruling on the merits.

29 Cf. *MCImetro Access Transmissions Services. Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4th Cir. 2003) (permitting ILEC to charge CLEC for cost of transporting calls originating on local exchange carrier's network to CLEC's chosen point of interconnection (POI) violates 47 C.F.R. 703(b), promulgated under section 251(b)(5) of Telecommunications Act, which prohibits local exchange carriers from charging for calls originating on their own networks.)

30 See footnote 24, *supra*.

31 MCI's position is consistent with the *Adelphia* decision as it relates to non-ISP bound traffic. T. 276-77.

to the *ISP Remand Order*, the Commission issued its *US LEC* decision.[32] In that order, the Commission acknowledged:

> [T]he D.C. Circuit has remanded the ISP Remand Order, but has expressly refused to vacate the order, as a result, the rules the FCC adopted remain in effect pending further FCC proceedings on remand. The FCC's ISP Remand Order sets forth a specific intercarrier compensation regime that concerns the exchange of ISP-bound traffic between Verizon South and US LEC during the course of this arbitrated agreement. This issue arises to address possible solutions in case there is a subsequent change of law on this point during the term of the interconnection agreement. Federal law does not obligate Verizon South, or entitle this Commission, to impose rules to address potential contingencies with respect to the meaning of federal law. Compensation for ISP-bound traffic, and all reciprocal compensation traffic, should be paid in conformance with federal law which governs the issue.[33]

Thus the Commission has recognized the applicability of the *ISP Remand Order*, and its continued vitality, with regard to ISP-bound traffic. See T. 266-67, 271.

Other state commissions have ruled in favor of CLECs as regards this issue. For example, the Alabama Public Service Commission has determined that ISP-bound virtual NXX calls are predominantly considered "interstate" and thus are subject to FCC jurisdiction.[34] The Alabama commission further concluded that carriers may continue to assign telephone numbers to end users physically located outside the rate center to which the numbers they are assigned are homed. The Alabama commission also noted that ILECs have traditionally treated virtual NXX traffic as local in all respects, including

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32 *In re: Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket 2002-181-C, Order on Arbitration, Order No. 2002-619 (August 30, 2002).

33 Id. at p. 30.

34 *Declaratory Ruling Concerning the Usage of Local Interconnection Services for the Provision of Virtual NXX Service*, Docket 28906, Declaratory Order, Alabama Public Service Commission (April 29, 2004).

with regard to intercarrier compensation. Likewise, the Texas Public Utility Commission upheld a finding that

> the compensation mechanism in the *ISP Remand Order* shall apply to all ISP-bound calls. The Arbitrators stated that "all ISP-bound traffic falls under the compensation mechanism outlined in the ISP Remand Order. Consequently, the Arbitrators found that all ISP-bound traffic, whether provisioned via an FX/FX-type arrangement or not, is subject to the compensation mechanism contained in the FCC's *ISP Remand Order*.' Consistent with this conclusion, the Commission withdraws its decision applying access charges to traffic bound for ISPs outside the local calling area.[35]

Accordingly, such calls are appropriately within the scope of interconnection agreements and may be transmitted on "local" interconnection trunks. T. 211-12. In this arbitration, only MCI's language is consistent with the FCC's mandate that "consumers are entitled to competition among network providers, application and service providers, and content providers."[36] The Commission should approve MCI's language.

III. MCI IS ENTITLED TO COMPENSATION OF $.0007 PER MINUTE FOR ISP-BOUND TRAFFIC

(Reciprocal Compensation Rate: Issue #21)

MCI proposes the rate of $.0007 per minute for "out of balance" non-ISP-bound "local" traffic and for "out of balance" ISP-bound traffic.[37] The RLECs make two arguments: that 1) MCI did not negotiate the terms of such compensation; and 2) the RLECs are not "opting into" the "interim" compensation scheme established by the FCC

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35 Order on Reconsideration, in *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015, Texas Public Utility Commission (2004).

36 Action by the FCC August 5, 2005, by Policy Statement (FCC 05-151).

37 See Appendix, issue #13.

in its *ISP Remand Order*. See T. 13, 60. The RLECs' arguments are spurious and should be summarily rejected.

With regard to the RLECs' first contention, MCI negotiated on the basis of the applicability of the *ISP Remand Order* to ISP-bound traffic between the parties. See T. 300-01. The RLECs do not dispute that the FCC's order was the subject of negotiations. The $.0007 rate was determined by the FCC in that order. Hence the RLECs' claim is without merit.

Concerning the second argument, $.0007 is no longer an "interim" rate, as a result of the *Core* decision. T. 158-59, 162. Moreover, the RLECs turn the *ISP Remand Order* on its head: the FCC stated that the rate and volume *caps* on compensation applied by that order would apply only if an ILEC offered to exchange all traffic subject to section 251(b)(5), i.e., for all "local" traffic that is not ISP-bound, at the same rate. An ILEC that does not offer to exchange section 251(b)(5) traffic at these rates *must* exchange ISP-bound traffic at state-approved or state-negotiated reciprocal compensation rates. *ISP Remand Order*, ¶¶8, 89. The FCC's intent was not that ILECs, by refusing to exchange ISP-bound traffic at the FCC's compensation rate – now $.0007 – would be entitled to exchange such traffic at *less than* that rate, or, as ILECs imply, at "bill and keep." Rather, the FCC intended that the ISP-bound rate would be *more than* the FCC's *capped* rates. In paragraph 89 of the *ISP Remand Order* the FCC stated, in relevant part:

> It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to 'pick and choose'

> intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier...Thus, if the applicable rate cap is $.0010 [per minute of use], the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This 'mirroring' rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

Read in its entirety, three conclusions may be drawn from this paragraph: 1) the caps on compensation for ISP-bound traffic were intended to be *floors*, not ceilings, on the compensation due from ILECs in default of negotiations; 2) the RLECs, having contended in their pleadings and testimony that "no reciprocal compensation rate was negotiated," T. 64, may not now contend that the rate for such traffic should be simply "bill and keep;" and 3) by having chosen not to offer to exchange section 251(b)(5) traffic at the FCC's capped rates, the RLECs must now exchange traffic at reciprocal compensation rates. Under the circumstances, MCI's proposal of $.0007 – which is *below that* of the approved BellSouth reciprocal compensation rate in South Carolina of $.0012655– is reasonable and should be accepted by the Commission.

IV. JIP SHOULD NOT BE IMPOSED WHEN IT IS NOT REQUIRED BY LAW, IS NOT REQUIRED BY THE INDUSTRY, IS IMPRACTICABLE FOR CLECS AND WOULD SERVE AS A BARRIER FOR ENTRY

(Calling Party Identification (CPN/JIP: Issues #3, #14, #16)

This group of issues concerns the information that is exchanged between carriers for call set-up, routing, and rating of calls. Calling Party Number ("CPN") is an established signaling parameter that assists carriers in determining the locations of the

user making the call. CPN is the industry standard for transmitting messaging for the jurisdictional origin of a call. "Back office" systems for billing, rating and auditing are designed based on CPN. CPN is also required under law. See 47 C.F.R. part 64. Accordingly, MCI's switches pass CPN to other carriers in accordance with industry standards and the law. T. 145-46, 150, 204, 333.

The RLECs propose that the parties be required to exchange the Jurisdictional Indicator Parameter ("JIP") as well as the CPN. JIP is a six-digit (NPA-NXX) field in the SS7 message. T. 144. The RLECs, however, concede that JIP is a signaling parameter new to the industry and that it is not a mandatory parameter. See T. 79, 88, 144, 330-31, 333. ("The NIIF [Network Interconnection Interoperability Forum] does not recommend proposing that the JIP parameter be mandatory." T. 86.) The parties also agree that the Alliance for Telecommunications Industry Solutions ("ATIS") a voluntary forum, is still working on rules for carriers to implement JIP, particularly for VoIP and wireless traffic. T. 85, 331. Populating the JIP field, then, within the SS7 message is optional.

Other carriers, particularly those within the region, including BellSouth, have not required JIP. See T. 87. The interconnection agreements entered into between affiliates of the RLECs and BellSouth do not require JIP. Moreover, the RLECs' affiliates' interconnection agreements with BellSouth contain provisions that require NPA-NXX codes to be utilized in such a way so that local traffic can be distinguished from

IntraLATA toll traffic, "regardless of the transport protocol method" used.[38] T. 145, 200, 202-03, 332.

CPN cannot be selectively manipulated or deleted en route. T. 148. MCI will not misrepresent CPN. T. 148, 204. Except for ISP-bound calls, the CPN the parties receive with local/EAS calls should have addresses associated with them in the 911 databases. The ISPs served by MCI also will be easily identifiable; i.e., the calls are one-way, to MCI's ISP customers, and to a limited number of NPA-NXX codes. T. 204. Unlike Hargray's affiliate's service, TWCIS' service is stationary, with numbers assigned only by the location of the end user. For another carrier to opt-into those parts of the interconnection agreement that discuss identification of the jurisdiction of the call, the carrier has to opt-into the entire agreement, which includes audit rights. T. 149, 151. Thus JIP is not only not required; it is unneeded in the present context.

A major reason for the development of JIP relates to the growth of the wireless industry. For example, if someone from New York uses a cell phone in a Florida hotel, the cell phone number will indicate what carrier is being used to originate the call, and the extra six digits in JIP could indicate the physical cell site location that originated the call. In the wireless context, this additional information could determine the routing of the call, and facilitate access to toll-free calls, which sometimes are blocked at present. These concerns are not present with stationary, wireline service. Although the industry has been concerned about "phantom traffic," which is defined as calls that lack sufficient information to determine the jurisdiction (i.e., interstate or intrastate) of the traffic for

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[38] See Hargray's affiliate's interconnection agreement at Attachment 3, section 6.2 and 3.2; Home's affiliate's interconnection agreement with BellSouth, attachment 3, section 8.1 and 5.2; and PBT's agreement with BellSouth, attachment 3, section 6.2. This language is what MCI has agreed to do in this proceeding for non-ISP traffic.

billing purposes, this type of traffic is an open issue in the FCC's intercarrier compensation proceeding, and as such is another reason the Commission should not adopt the RLECs' proposal. T. 146, 204.

MCI's class 5 switches – i.e., those used for local service – are in Atlanta and Charlotte. Each RLEC will be assigned to one or the other switch. T. 143. This type of arrangement is not unusual for CLECs, which use a limited number of switches to cover multiple ILEC serving areas, and thus cross state and LATA boundaries. T. 143-44. Given this reality, some examples may serve to illustrate the difficulty in implementing the RLECs' proposal: A call originated in Columbia, South Carolina would go to MCI's switch (either in Atlanta or Charlotte). Assume that the call is to be delivered to an end user in Columbia. The use of JIP would indicate this is a toll call from Atlanta/Charlotte. The call, however, should be rated and billed to the originating end user as a local call. T. 147. This situation is similar to the scenario RLECs describe, T. 83, in that the JIP of the switch would not "accurately represent" the location of the caller. Using a different example, assume the originating end user is in Columbia, the switch is in Charlotte, and the terminating end user is in Charlotte. This call should be rated as a toll call, but it will be characterized as local call based on the JIP to the terminating end user. T. 148. Indeed, as the RLECs admit, when the Hargray affiliate's VoIP-product is used to originate a call from outside the LATA to which the NXX code for the product has been assigned, the JIP that "is going to show up is from the Hargray switch in Pritchardville," T. 348, thus ensuring that the JIP will not properly identify the call consistently with what

the RLECs demand in this proceeding. Thus it is evident that JIP is not a panacea for the jurisdictional rating of traffic.[39]

MCI will pass JIP, but it will be only the JIP of the MCI switch. This limited use of JIP cannot be used to accurately rate traffic. MCI will not and cannot pass a unique JIP for every LATA served by its switch as the RLECs request. T. 90, 147, 149-50 200-02. Further, a requirement that CLECs provide a unique JIP for every local calling area served by a CLEC switch would require the scope of the CLEC switch to be limited because separate partitions would have to be created for each JIP and separate "look-up" tables would have to be managed and created for each RLEC local calling area. This would create significant additional equipment, software and administrative cost and would create network inefficiency. The economies of scale available to CLECs for switching would be drastically reduced. Moreover, a requirement that CLECs provide RLECs with a unique JIP for every local calling area served by the CLEC switch would cause CLECs to limit the calling area scope of their class 5 switches and to exit certain markets, thus undermining the FCC's recent *TRRO* decision[40] that CLECs are not impaired without access to ILEC unbundled switching. T. 150, 201, 314-15.

Issue #14 concerns traffic that lacks CPN or JIP (as proposed by MCI) or that lacks CPN and JIP (as proposed by the RLECs). MCI proposes that unidentified traffic be treated as having the same jurisdictional ratio as the ratio of the identified traffic. The

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[39] Thus if a call is generated from a wireline phone and terminates with a wireless phone, it is difficult to know in what location the call termination has occurred, because that JIP field has not yet been addressed. It is difficult for the terminating carrier to determine in what city the caller was located. This could affect, for example, the rates charged. T. 146-47.

[40] See *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290, (rel. February 4, 2005), ¶¶207, 209, 222-23.

RLECs agree with this premise, *except* that if the unidentified traffic exceeds 10% of the total traffic, then the RLECs demand that *all* the unidentified traffic shall be billed at the RLECs' access charge rates. T. 93, 334. The RLECs' proposal is unfair and unnecessary. Concerns over fraud should be dealt with by the parties through audit provisions and cooperative efforts pursuant to language to which they have already agreed. T. 152.

Issue #16 raises the question whether the parties always must pass the signaling parameters that are the subject of this dispute (CPN and/or JIP) to the other interconnecting carrier, or whether these parameters will be passed along as they are received. MCI's language is to be preferred, because no party can guarantee that CPN will exist on all calls. MCI, no differently than other carriers, will have as much control over traffic to and from TWCIS as the RLECs themselves have over traffic to and from their customers. T. 125, 152-53. For these reasons MCI's language for this group of issues should be adopted by the Commission.

CONCLUSION

Accordingly, MCI requests the Commission to approve its language, direct the parties to implement the same expeditiously, and approve the parties' interconnection agreement.

Respectfully submitted this 17th day of August, 2005.

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CERTIFICATE OF SERVICE

I, Betty J. DeHart of Woodward, Cothran & Herndon, Attorneys for MCI, Inc., do hereby certify that I have served a copy of the Post-Hearing Brief of MCI by causing to be deposited in a United States Postal Service mailbox copies of the same, postage prepaid, addressed to the persons indicated below.

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SWORN to before me this

17th day of August, 2005.

Kimberly Mera (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/08/08

APPENDIX:

SERVING CUSTOMERS DIRECTLY VS. INDIRECTLY:

Issues #6, #10(a), #15, #17:

Issue 6:

GT&C definition of end user:

A retail business or residential end-user subscriber to Telephone Exchange Service provided directly ***or indirectly*** by either of the Parties.

Issue #10(a):

Interconnection, section 1.1:

> This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, **where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA.** This Agreement also addresses Transit Traffic as described in Section 2.2 below. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to the Act.

Issue #15:

Interconnection, section 3.1:

> Dedicated facilities between the Parties' networks shall be provisioned as two-way interconnection trunks, **and shall only carry IntraLATA traffic originated or terminated directly between each Parties End User Customers**. The direct interconnection trunks shall meet the Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275

Issue #17:

Number portability, section 1.1:

> The Parties will offer service provider local number portability (LNP) in accordance with the FCC rules and regulations. Service provider portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. **Under this arrangement, the new Telecommunications Service provider must directly provide Telephone Exchange Service or resell an end user local exchange service through a third party Telecommunications Service provider to the End User Customer porting the telephone number.** The dial tone must be derived from a switching facility that denotes the switch is ready to receive

dialed digits. **In order for a port request to be valid, the End User Customer must retain their original number and be served directly by the same type of Telecommunications Service subscribed to prior to the port.**

ISP-Bound Traffic:

Issue #8, #10(B), #13:

Issue #8:

GT&C Glossary:

MCI Language:

INTRALATA TRAFFIC Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS. ***ISP bound traffic will be rated based on the originating and terminating NPA-NXX.***

ISP-BOUND TRAFFIC

ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) ***that may be physically located in the Local/EAS area of the originating End User Customer or has purchased FX service from the CLEC. The FCC has jurisdiction over ISP traffic and sets the rules for compensation for such traffic***

LOCAL/EAS TRAFFIC

Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in ILEC's tariff. ***ISP-bound traffic may be carried on local interconnection trunks but will be rated based on the originating and terminating NPA-NXX)***

RLEC Language:

INTRALATA TRAFFIC Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS.

ISP-BOUND TRAFFIC

ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) **who is physically located in an exchange within the Local/EAS area of the originating End User Customer. Traffic originated from, directed to or through an ISP physically located outside the originating End User Customer's Local/EAS area will be considered switched toll traffic and subject to access charges.**

LOCAL/EAS TRAFFIC

Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in ILEC's tariff.

Issue #10(b):

Interconnection, section 1.1 –

This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, **where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA.** This Agreement also addresses Transit Traffic as described in Section 2.2 below. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to **Sections 251 (a) and (b) of** the Act.

Issue 13:

Interconnection, section 2.4:

The Parties agree to only route IntraLATA Traffic over the dedicated facilities between their networks. InterLATA Traffic shall be routed in accordance with Telcordia Traffic Routing Administration instruction and is not a provision of this Agreement. Both Parties agree that compensation for intraLATA Traffic shall be in the form of the mutual exchange of services provided by the other Party with no additional billing ***if the traffic exchange is in balance. Traffic is considered out-of-balance when one Party terminates more than 60 percent of total Local/EAS traffic exchanged between the Parties. The Parties also agree that the compensation for ISP-bound traffic when out of balance is governed by the FCC's orders on compensation for ISP-bound traffic, specifically (1) the so-call ISP Remand Order [Intercarrier Compensation for ISP-based Traffic, Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001)] and (2) the modifications to that order made in the FCC's decision on Core Communications' forbearance request (Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. Paragraph 161 (c) from Application of the***

ISP Remand Order, WC Docket No. 03-171, released October 18, 2004). Traffic studies may be requested by either party to determine whether traffic is out of balance. Such traffic studies will not be performed more than four times annually. Should a traffic study indicate that Local/EAS/ISP-bound traffic exchanged is out-of-balance, either Party may notify the other Party that mutual compensation between the Parties will commence in the following month. The Parties agree that charges for termination of Local/EAS and ISP-bound Traffic on each Party's respective networks are as set forth in the Pricing Attachment. **related to exchange of such traffic issued by either Party except as otherwise provided in this Agreement.**

CALLING PARTY IDENTIFICATION (CPN/JIP)

Issues #3, #14, #16:

Issue #3:

GT&C, section 9.5:

> The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard automatic message accounting records made within each Party's network. The records shall contain the information to properly assess the jurisdiction of the call including ANI or service provider information necessary to identify the originating company, including **the JIP and** originating signaling information. The Parties shall each use commercially reasonable efforts, to provide these records monthly, but in no event later than thirty (30) days after generation of the usage data.

Issue #14:

Interconnection, section 2.7.7-

> If either Party fails to provide accurate If either Party fails to provide accurate CPN (valid originating information) ***or*** **and** Jurisdiction Information Parameter ("JIP") on at least ninety percent (90%) of its total originating INTRALATA Traffic, then traffic sent to the other Party without CPN or JIP (valid originating information) will be handled in the following manner. ***All unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic.*** **The remaining 10 percent (10%) of unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic. If the unidentified traffic exceeds ten percent (10%) of the total traffic, all the unidentified traffic shall be billed at a rate equal to ILEC's applicable access charges. The originating Party will provide to the other Party, upon request, information to demonstrate that Party's portion of traffic without CPN or JIP traffic does not exceed ten percent (10%) of the total traffic delivered.** The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure and to assist its correction.

Issue #16:

Interconnection, section 3.6-

Signaling Parameters: ILEC and CLEC are required to provide each other with the proper signaling information (e.g. originating accurate Calling Party Number, **JIP** and destination called party number, etc.) pursuant 47 C.F.R. § 64.1601, to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be ***passed along as received*** **provided** including CPN, JIP, Originating Line, Calling party category, Charge Number, etc. All privacy indicators will be honored

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Cambridge Telephone Company	:	
C-R Telephone Company	:	
El Paso Telephone Company	:	
Geneseo Telephone Company	:	**05-0259**
Henry County Telephone Company	:	**05-0260**
Mid Century Telephone Cooperative, Inc.	:	**05-0261**
Reynolds Telephone Company	:	**05-0262**
Metamora Telephone Company	:	**05-0263**
Harrisonville Telephone Company	:	**05-0264**
Marseilles Telephone Company	:	**05-0265**
Viola Home Telephone Company	:	**05-0270**
	:	**05-0275**
Petitions for Declaratory Relief and/or	:	**05-0277**
Suspension or Modification Relating	:	**05-0298**
to Certain Duties under Sections	:	
251(b) and (c) of the Federal	:	**(Cons.)**
Telecommunications Act, pursuant to	:	
Section 251(f)(2) of that Act; and for	:	
any other necessary or appropriate	:	
relief.	:	

ORDER

By the Commission:

I. INTRODUCTION

From April 15, 2005 through May 4, 2005, Cambridge Telephone Company, C-R Telephone Company, El Paso Telephone Company, Geneseo Telephone Company, Henry County Telephone Company, Mid Century Telephone Cooperative, Reynolds Telephone Company, Metamora Telephone Company, Harrisonville Telephone Company, Marseilles Telephone Company, and Viola Home Telephone Company (collectively "Petitioners") each filed with the Illinois Commerce Commission ("Commission") a verified petition requesting extensive relief from certain obligations under the federal Telecommunications Act ("Federal Act"), 47 U.S.C. 151 et seq. Because the petitions are nearly identical, the dockets have been consolidated.

As an initial matter, Petitioners ask the Commission to promptly enter an interim order without hearing staying any obligation they have to negotiate reciprocal compensation or interconnection with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. ("Sprint") and staying any arbitration proceeding which may arise from Petitioners and Sprint's inability to agree on certain interconnection

matters until these proceedings have concluded. Thereafter, Petitioners seek a declaratory ruling by the Commission, pursuant to 83 Ill. Adm. Code 200.220, finding that they have no duty under Section 251(b)(2) and (5) of the Federal Act to negotiate reciprocal compensation or local number portability and no duty under Section 251(c) of the Federal Act to negotiate interconnection with an indirect transiting carrier or any carrier that does not intend to provide local exchange telecommunications service in their respective local serving areas. In response to an April 21, 2005 legal inquiry by the Administrative Law Judge ("ALJ"), Petitioners clarify the relief they seek by stating that if the Commission does not issue the initial declaratory ruling sought by Petitioners, the Commission should issue a declaratory ruling concluding that Petitioners are exempt from negotiating any terms of interconnection or reciprocal compensation by virtue of their rural exemptions under Section 251(f)(1) of the Federal Act.

If the Commission does not enter either of the declaratory rulings sought by Petitioners, they seek an order, pursuant to Section 251(f)(2) of the Federal Act, suspending or modifying their obligation to negotiate reciprocal compensation or local number portability under Section 251(b)(2) and (5) with an indirect transiting carrier that does not intend to provide local exchange telecommunications service in their respective local serving areas and has no ability to unambiguously identify the traffic it would terminate as "local" to Petitioners. Also pursuant to Section 251(f)(2) of the Federal Act, Petitioners seek a suspension or modification of their obligation to negotiate interconnection under Section 251(c) with a carrier seeking to force them to establish and support a point of interconnection outside of their respective local serving areas. In the event that they are not able to obtain the desired suspensions or modifications under Section 251(f)(2), Petitioners ask that the Commission identify the terms and conditions, including timeframes, under which they may have a duty to negotiate with Sprint.

Only Sprint filed a petition to intervene, which was granted by the ALJ. Commission Staff ("Staff") participated as well. The aforementioned April 21, 2005 inquiry from the ALJ also specified the date by which Staff and any intervener should respond to the declaratory ruling request. A deadline was also established by which Petitioners should reply to any response from Staff and any intervener. Sprint offered a response to the ALJ's April 21, 2005 inquiry as well as a response to the merits of Petitioners' declaratory ruling requests. Staff, however, only responded to the ALJ's inquiry and specifically declined to offer any opinion on the substance or merits of the petitions. Petitioners each filed a reply to the responses of Staff and Sprint.

Although Petitioners seek an interim order staying any obligation to negotiate with Sprint, the Commission believes that it can sufficiently address the issues raised by Petitioners in a timely manner with a single order. A Proposed Order was served on the parties. Sprint and Staff each filed a Brief on Exceptions, although Staff did not actually take exception to the Proposed Order. Instead, Staff simply suggested the addition of language indicating that the Commission's conclusions on these dockets are limited to the facts and circumstances of these dockets. Sprint, Staff, and Petitioners each filed a Brief in Reply to Exceptions. Petitioners have no objection to Staff's suggestion. The

Briefs on Exceptions and Briefs in Reply to Exceptions have been considered in the preparation of this Order. At the request of Sprint, the Commission also heard oral argument in these matters on June 9, 2005. In accordance with Section 200.220(h) of the Commission's rules, the Commission disposes of the requests for the declaratory rulings on the basis of the written submissions before it and the June 9, 2005 oral argument.

II. BACKGROUND

Petitioners are small facilities-based incumbent local exchange carriers ("LEC") providing local exchange services, as defined in Section 13-204 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., subject to the jurisdiction of the Commission. Cambridge Telephone Company provides service in the Cambridge and Osco exchanges. C-R Telephone Company serves the Cornell and Ransom exchanges. El Paso Telephone Company serves only the El Paso exchange. Geneseo Telephone Company provides service in the Geneseo and Green River exchanges. Henry County Telephone Company serves the Atkinson and Annawan exchanges. Mid Century Telephone Cooperative, Inc. serves the Ellisville, Altona, Williamsfield, Table Grove, Summum, Fairview, Smithfield, Maquon, Gilson, Victoria, Marietta, Bishop Hill, and Lafayette exchanges. Reynolds Telephone Company serves only the Reynolds exchange. Metamora Telephone Company provides service in the Metamora and Germantown Hills exchanges. Harrisonville Telephone Company serves the Columbia, Dupo Prairie Du Rocher, Red Bud, Renault, Valmeyer, and Waterloo exchanges. Marseilles Telephone Company serves only the Marseilles exchange while Viola Home Telephone Company serves only the Viola exchange. Petitioners each provide service to less than 2% of subscriber lines nationwide. Petitioners are each a "rural telephone company" within the meaning of Section 153(37) of the Federal Act and Section 51.5 of the rules of the Federal Communications Commission ("FCC"). As rural telephone companies, Petitioners each possess a rural exemption under Section 251(f)(1)(A) of the Federal Act from the requirements of Section 251(c) of the Federal Act.

Sprint is an interexchange telecommunications carrier authorized to provide interexchange services throughout Illinois. Sprint is authorized by the Commission to provide resold and facilities-based local exchange telecommunications services as well in those portions of Illinois served by Illinois Bell Telephone Company and Verizon North, Inc. and Verizon South, Inc. According to Sprint's petition to intervene, such local authority was granted in Docket Nos. 96-0141 and 96-0598, respectively. Pursuant to the Order entered in Docket No. 96-0261, Sprint states that it is also authorized to provide resold local exchange services in those portions of MSA-1 served by Central Telephone Company of Illinois ("Centel"). Sprint relates that it received authority to provide local exchange service in those portions of Illinois outside of MSA-1 served by Centel in Docket No. 97-0295. Sprint reports that the Centel exchanges have subsequently been sold to Illinois Bell Telephone Company and Gallatin River Communications L.L.C. Sprint currently is not authorized to provide local exchange services within any of the Petitioners' serving areas. On May 6, 2005, however, Sprint filed an application requesting authority to provide resold and facilities-based local and

interexchange services throughout Illinois. Sprint's application is identified as Docket No. 05-0301.

As indicated above, Petitioners have initiated these proceedings to resolve certain disputes with Sprint. On September 7, 2004, Sprint sent a letter to each Petitioner seeking to begin negotiations for an interconnection agreement pursuant to Sections 251 and 252 of the Federal Act. Over the next few months, Petitioners and Sprint exchanged correspondence intended to focus and clarify the interconnection request. Sprint does not seek to interconnect with Petitioners pursuant to Section 251(c) of the Federal Act. Rather, Sprint wishes to interconnect and exchange traffic pursuant to subsections (a) and (b) of Section 251.

According to Sprint, it seeks interconnection with Petitioners to offer competitive alternatives in telecommunications services to consumers in rural Illinois through a business model in which Sprint provides telecommunications services to other competitive service providers seeking to offer local voice service. With regard to Illinois, Sprint has entered into a business arrangement with MCC Telephony of Illinois, Inc. ("MCC") to support its offering of local and long distance voice services.[1] Sprint states that the relationship enables MCC to enter the local and long distance voice market without having to "build" a complete telephone company. In effect, MCC has outsourced much of the network functionality, operations, and back-office systems to Sprint. Sprint relates that it has relationships utilizing this same market entry model with Wide Open West, Time Warner Cable, Wave Broadband, Blue Ridge Communications, and others not publicly announced serving almost 300,000 customers across over a dozen states including Illinois.

Under the arrangement between MCC and Sprint, MCC is responsible for marketing and sales, end-user billing, customer service, and the "last mile" portion of the network which includes the MCC hybrid fiber coax facilities, the same facilities it uses to provide video and broadband Internet access. Service is provided in MCC's name. Sprint provides the public switched telephone network ("PSTN") interconnection utilizing Sprint's switch (MCC does not own or provide its own switching), competitive LEC status, and the interconnection agreements it has or is negotiating with incumbent LECs. Sprint also uses existing numbers or acquires new numbers, provides all number administration functions including filing of number utilization reports with the North American Numbering Plan Administrator, and performs the porting function whether the port is from the incumbent LEC or a competitive LEC to Sprint or vice versa. Sprint is also responsible for all inter-carrier compensation, including exchange access and reciprocal compensation. Sprint provisions 9-1-1 circuits to the appropriate Public Safety Answering Points ("PSAP") through the incumbent LEC selective routers, performs 9-1-1 database administration, and negotiates contracts with PSAPs where

[1] On December 15, 2004, the Commission entered an Order in Docket No. 04-0601 authorizing MCC to provide resold and facilities-based local and interexchange telecommunications services throughout Illinois. MCC is an affiliate of Mediacom Communications Corporation, a cable television provider within parts of Petitioner's serving area.

necessary. Finally, Sprint places MCC directory listings in the incumbent LEC or third party directories.

In light of the relationship between Sprint and MCC, specifically the services provided by Sprint to MCC, Petitioners contend that they have no obligation to negotiate reciprocal compensation, local number portability, or interconnection with Sprint. Petitioners maintain this position regardless of their rural carrier exemptions under Section 251(f)(1)(A).

III. SECTION 251(f)(1)(A) THRESHOLD INQUIRY

Despite Petitioners' insistence to the contrary, a threshold inquiry involving Section 251(f) exists that could resolve this matter, at least in part. As previously noted, Section 251(f)(1)(A) exempts Petitioners, as rural telephone companies, from the obligations imposed in Section 251(c).[2] Nevertheless, Petitioners seek a declaratory ruling that it need not negotiate interconnection as required by Section 251(c), or, in the alternative, a suspension under Section 251(f)(2) of the obligation to negotiate interconnection as required by Section 251(c). Although Petitioners seek the relief regarding Section 251(c) independent of the Section 251(f)(1)(A) exemption, the Commission is not inclined to expend limited resources answering questions that are moot. Because Petitioners possess an exemption from Section 251(c), the type of arrangement Sprint has with MCC and the services provided by Sprint to MCC are irrelevant as they relate to Section 251(c). Accordingly, the Commission declines to issue a declaratory ruling regarding the obligations established by Section 251(c), which is within its discretion to do under Section 200.220(a). Nor will the Commission consider a suspension of the Section 251(c) obligations under Section 251(f)(2) given the exemption Petitioners already possess. In any event, the Commission notes Sprint's claim that it is not seeking interconnection under Section 251(c).

The next step in the inquiry is to determine whether Petitioners' exemption from Section 251(c) also covers their obligations under Section 251(b). Section 251(c)(1) obligates all incumbent LECs to negotiate in good faith terms and conditions of agreements fulfilling the obligations established for all LECs (both incumbent and competitive) in Section 251(b). Petitioners argue that their duty to negotiate the obligations of Section 251(b) arise from Section 251(c). If Section 251(c) does not apply to them, Petitioners conclude that Section 251(b) can not either. Staff, however, contends that Petitioners overstate the reach of their exemption from Section 251(c). Section 251(b), according to Staff, establishes obligations of all LECs independent from any exemption of Section 251(c) for rural incumbent LECs. Because it seeks to interconnect under Section 251(a) and (b), Sprint maintains that Section 251(f)(1) provides no exemption for Petitioners. Consistent with the FCC's treatment of this issue, the Commission finds that an exemption from Section 251(c) does not encompass the obligations imposed in Section 251(b). Section 251(f)(1)(A) provides relief only from the requirements of Section 251(c).

[2] The Commission also notes that it has not received a bona fide request seeking to lift any of the Petitioners' exemption pursuant to Section 251(f)(1)(B).

In light of the limited scope of Section 251(f)(1)(A), Petitioners' declaratory ruling request regarding Section 251(b)(2) and (5) remains for the Commission's consideration. Whether Petitioners have any duty under Section 251(a) to negotiate interconnection and (b) to provide number portability and establish reciprocal compensation arrangements for the transport and termination of telecommunications under the circumstances described above is the focus of the remainder of this Order.

IV. PETITIONERS' DUTY TO NEGOTIATE[3]

A. Petitioners' Position

While Petitioners do not deny that Sprint is a telecommunications carrier that provides telecommunications services in various areas of Illinois, Petitioners do not believe that this fact means that Sprint is a telecommunications carrier for all purposes. Petitioners note Sprint's acknowledgement of the fact that the focus of both the state and federal definitions of telecommunications services is primarily upon the services being provided rather than the provider of those services. Petitioners point out that Section 51.703(a) of the FCC's rules provides that LECs must "establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting *telecommunications carrier*." (emphasis added) Section 153(44) of the Federal Act defines "telecommunications carrier" as:

> any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under [the Federal Act] only to the extent that it is engaged in providing telecommunications services, except that the [FCC] shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

Section 153(46) of the Federal Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

Petitioners apply the Federal Act's definitions to the service that Sprint intends to provide MCC and conclude that Sprint is not acting as a telecommunications carrier. Specifically, Petitioners state that Sprint clearly will not be providing the services over which it seeks negotiation "directly" to the public. Nor, Petitioners continue, can it be said that Sprint will be providing services "to such classes of users as to be effectively available directly to the public" when it provides services to MCC which will then provide services to the public. Petitioners acknowledge that the Public Utilities Commission of Ohio ("PUCO") recently issued a decision rejecting the arguments Petitioners now

[3] As noted above, when given the opportunity, Staff declined to address the merits of Petitioners' declaratory ruling request.

make. In the PUCO docket,[4] similarly situated small rural incumbent LECs sought exemptions under Section 251(f)(1) and (2) of the Federal Act when confronted with an arrangement between MCImetro Access Transmission Services, LCC, Intermedia Communications, Inc., and Time Warner Cable Information Services (Ohio), LLC similar to the arrangement between Sprint and MCC. Petitioners contend that the PUCO is simply wrong.

In support of its view of the PUCO decision, Petitioners state that both the FCC and United States Court of Appeals for the District of Columbia Circuit have rejected the argument that a service can be interpreted as effectively available directly to the public by looking to how a private carriers' telecommunications carrier customers use that service. According to Petitioners, in *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (1999), the D.C. Circuit affirmed the FCC's conclusion that the term "telecommunications carrier" under the Federal Act incorporates the preexisting definition of "common carrier" established by the earlier case of *National Association of Regulatory Commissioners v. FCC* ("*NARUC*"), 525 F.2d 630 (D.C. Cir. 1976). (*See Virgin Islands Telephone Corp.*, 198 F.3d at 925-26)

Under the *NARUC* test, Petitioners state that "common carrier" status turns on whether the carrier "undertakes to carry for all people indifferently." (*Id.* at 926 (citing *NARUC*, 525 F.2d at 642)) In *Virgin Islands Telephone*, the court reviewed an FCC finding that an AT&T affiliate called AT&T-SSI was not acting as a common carrier by making capacity on its submarine cables available to other telecommunications providers that would, in turn, make that capacity available through services provided to end-user customers. The FCC had concluded that a service will not be considered "available to the public" or "effectively available to a substantial portion of the public" if it is "provided only for internal use or only to a specified class of eligible users under the Commission's rules." The FCC also stated that "whether a service is effectively available directly to the public depends on the type, nature, and scope of users for whom the service is intended and whether it is available to 'a significantly restricted class of users." (*Virgin Islands Telephone*, 198 F.3d at 924) The FCC rejected the argument that AT&T-SSI would be making a service effectively available directly to the public because AT&T-SSI's *customers* would use the capacity to provide a service to the public, noting that "[s]uch an interpretation is contrary to the plain language of the [Federal Act] by focusing on the service offerings AT&T-SSI's customers may make rather than on what AT&T-SSI will offer." (*Id.*)

In reaffirming the *NARUC* test, Petitioners note that the FCC specifically rejected the inclusion of a "carrier's carrier" in the definition of telecommunications carrier and specifically rejected the suggestion that the Federal Act "introduce[d] a new concept whereby we must look to the customers' customers to determine the status of a carrier." (*Id.* at 926) According to the court, Petitioners continue, the key to common carrier status is "the characteristic of holding oneself out to serve indiscriminately." (*Id.* at 927)

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[4] *In the Matter of the Application and Petition in Accordance With Section II.A.2.b. of the Local Guidelines Filed by: The Champaign Telephone Company* et al. 04-1494-TP-UNC et seq., Finding and Order, January 26, 2005; Order on Rehearing, April 13, 2005.

(quoting *NARUC*, 525 F.2d at 642) Petitioners state that the court approved the FCC's decision to contrast such common carrier/telecommunications carrier behavior to "private carrier" activity under which a carrier makes individualized decisions about whether and on what terms to serve done under contract between carriers. (*Virgin Islands Telephone Corp.*, 198 F.3d at 925)

Under this analysis, Petitioners argue that Sprint is clearly acting as a private carrier in its dealings with MCC. Petitioners add that it makes no difference whether Sprint is acting as a transiting carrier or a private switching and back office service provider. So long as Sprint is not providing service to end-users or making its service available indiscriminately to all takers, Petitioners aver that Sprint is providing private carrier or vendor services to MCC and is not providing service to the public. As a private carrier, Petitioners maintain that Sprint is not a telecommunications carrier and is not seeking to negotiate for the provision of telecommunications service in Petitioners' respective serving areas.

Petitioners also argue that Sprint's definition of telecommunications carrier does not comply with common sense. For example, even though Sprint seeks to negotiate reciprocal compensation, Petitioners assert that Sprint will originate no traffic on which reciprocal compensation will be owed and will terminate no traffic on which it will be owing. Any such traffic, Petitioners continue, would be MCC's and MCC should be primarily responsible. Similarly, while Sprint seeks an agreement on local number portability, the entity to which such numbers would be ported to and portable from would be MCC. Petitioners contend that MCC should be responsible for such obligations directly to it. The same is true, Petitioners add, with dialing parity. In all cases, Petitioners argue, the contractual rights that Sprint is seeking would be properly negotiated by MCC and the contractual obligations for which they will be negotiating should be obligations on MCC for which they should have rights enforceable against MCC. Petitioners aver that the overall design of subsections (b) and (c) of Section 251 is to establish contractual privity between the parties that have the reciprocal rights and obligations. Petitioners do not believe that it makes any sense to interpose a back office service provider into the middle of that relationship. If MCC intends to provide telecommunications services, Petitioners maintain that MCC should be the one seeking negotiations.

Moreover, if taken to its extreme, Petitioners claim that Sprint's position would mean that every vendor whose services are incorporated into a telecommunications service is a "telecommunications carrier." This could not only allow every vendor in the industry to demand negotiations, Petitioners point out, it would also impose a number of regulatory burdens on vendors that have no ability to meet those burdens. Nor, according to Petitioners, does it make sense that a carrier that is certificated to provide telecommunications services somewhere (or even actually provides telecommunications services somewhere) is therefore entitled to negotiate agreements everywhere. In order for Section 251 to make practical sense, Petitioners contend that it must be limited to negotiations with carriers that have some plan to be a telecommunications carrier and provide telecommunications services within the serving

area of the LEC with which they seek to negotiate. Petitioners insist that Sprint simply does not meet those threshold conditions, whether measured under the terms of the Federal Act as interpreted by the FCC and federal courts or measured by a simple common sense reading of the obligations of the Federal Act.

Because Sprint will not be acting as a telecommunications carrier providing telecommunications services within the meaning of the Federal Act, Petitioners maintain that Sprint is the wrong entity to be negotiating the reciprocal compensation and local number portability arrangement that Sprint is seeking. Petitioners characterize Sprint's claim to be a telecommunications carrier and its reliance on MCC's intent to provide broadband voice information services in competition with Petitioners as a shell game. They state that the only role Sprint truly proposes to play under the agreement it proposes to negotiate with them is as private vendor to MCC.

So that their position is clear, Petitioners expressly state that they have no objection to the "business arrangement" that they understand to exist between Sprint and MCC. If MCC, whether directly or through its affiliates, intends to provide telecommunications services and be a telecommunications carrier in Illinois and in their respective serving areas, Petitioners asserts that this entire issue would be avoided if, as the Federal Act contemplates, MCC initiated the negotiation process with them. Petitioners contend that the absence of the purported local service provider overshadows what services Sprint may or may not provide. In their opinion, there is no apparent legitimate reason not to impose on the purported service provider the obligation to initiate and conduct negotiations and be a party to the resulting agreement, no matter whether it intends to self-provision or rely on third parties such as Sprint.

B. Sprint's Position

Sprint maintains that Petitioners are obligated by the Federal Act to interconnect with it and provide number portability and establish reciprocal compensation arrangements despite the fact that MCC is the entity directly serving the end-user. Sprint relates that it has entered into agreements with telecommunications service providers that intend to compete with the Petitioners' local voice services. These agreements require Sprint to provide certain services, including but not limited to number acquisition and administration, telephone number assignment, including local routing numbers, port requests, switching, and transport of local calls, and exchange access to and from the PSTN, including calls to 9-1-1 for end-users.

Like Petitioners, Sprint too relies on the definition of "telecommunications service" in Section 153(46) of the Federal Act to support its position. Sprint emphasizes the latter part of the definition ("..., or to such class of users as to be effectively available directly to the public, ...") and notes the PUCO's recent decision relying on this portion of the definition.[5] As discussed above, the PUCO rejected arguments similar to those raised by Petitioners in a case involving services similar to those which Sprint intends to provide to MCC. The PUCO specifically found that MCI was a

[5] See Footnote No. 4.

telecommunications carrier and that the rural incumbent LECs had a duty to interconnect with MCI. The PUCO also concluded that MCI was acting in a role no different than other telecommunications carriers whose network could interconnect with the rural incumbent LECs so that traffic is terminated to and from each network and across networks. Like MCI, Sprint contends that its proposed interconnection with Petitioners places it in the same position as other intermediate carriers whose interconnections terminate traffic to and from each network and across networks. Because its services will be effectively available to the public (through MCC), Sprint maintains that it is a telecommunications carrier offering telecommunications services.

Because it is telecommunications carrier, Sprint argues further that Section 251(a) of the Federal Act establishes an independent basis for interconnection. Section 251(a) requires each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Sprint reports that neither subsection (f)(1) nor (f)(2) of Section 251 provide Petitioners with an exemption from their obligation to allow for direct or indirect interconnection. Moreover, Sprint points out that it has not requested interconnection pursuant to Section 251(c). In this regard, Sprint is a facilities-based carrier that does not require access to Section 251(c) provisions such as unbundled network elements, collocation, and resale. Sprint states that it is much like a wireless carrier in that it owns all of its own facilities and, therefore, does not need to take advantage of the rights granted to telecommunications carriers under Section 251(c) to use an incumbent LEC's network to compete against the incumbent LEC.

Sprint adds that Section 251(a) does not specifically mention the types of traffic to be exchanged nor does it exclude certain types of traffic. In this regard, Sprint states that Congress has provided definitions of not only "telephone exchange service," but also "telephone toll service."[6] Congress, Sprint continues, could easily have excluded any one of these services or limited Section 251(a)'s applicability to any one of these services, but it did not. Sprint contends that Petitioners may not, therefore, impose a restriction on Sprint that is not contained in the statute. To allow Petitioners to do so, Sprint argues, would undermine one of the enduring tenants of statutory construction – that is – to give effect, if possible, to every clause and word of a statute. Accordingly, Sprint concludes that Petitioners must interconnect either directly or indirectly with it for the exchange of local traffic pursuant to Section 251(a).

Not only does the plain language of Section 251(a) require Petitioners to interconnect with Sprint independent of Section 251(c), Sprint observes that it appears the Commission has approved an agreement between Geneseo Telephone Company and a wireless carrier, Nextel Partners, that contains terms for both direct and indirect interconnection and reciprocal compensation without reference to Section 251(a) of the Federal Act.[7] Of particular interest to Sprint is the part of the agreement that requires

[6] 47 U.S.C. §§ 153(47) and 153(48).
[7] *See* Order entered on April 21, 2004 and Amendatory Order entered on May 26, 2004 in Docket No. 04-0120; *NPCR, Inc. d/b/a Nextel Partners, as agent for Nextel WIP License. Corp. and Nextel WIP*

the originating party to pay any transiting charges when the parties exchange traffic on an indirect basis.[8] Sprint states that this is exactly the type of arrangement Sprint seeks to enter with Petitioners. Sprint is adamant that Petitioners should not be permitted to discriminate against it. Indeed, Sprint insists, any such discrimination would be antithetical to the FCC's policy pronouncement that "all telecommunications carriers that compete with each other should be treated alike regardless of the technology used..."[9] Both it and Nextel Partners, Sprint points out, are telecommunications carriers that are obligated to comply with and are entitled to all the rights and privileges that result from Section 251(a).

C. Commission Conclusion

Sprint and MCC's interest in competing in certain of the more rural exchanges in Illinois is significant in that it represents one of the first, if not the first, competitive landline ventures into the relevant exchanges. To determine if Petitioners have a duty to negotiate interconnection with Sprint, the Commission must first evaluate whether Sprint, for purposes of its arrangement with MCC, is a telecommunications carrier as defined by federal law. A telecommunications carrier is "any provider of telecommunications services." 47 U.S.C. §153 (44). Federal law defines telecommunications services as "the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of facilities used"...a telecommunications carrier is a common carrier to the extent it provides telecommunications services. 47 U.S.C. §153 (46).

The parties offer a number of court and public utility commission decisions to aide us in interpreting these definitions, relying heavily on *Virgin Islands Telephone Corporation v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) ("Virgin Islands").[10] The *Virgin Islands* decision distinguishes between private carriers and common carriers, affirming the FCC's determination that a telecommunications carrier must be a common carrier.*Id*. To be considered a common carrier, an entity must meet a two-pronged test as set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) ("NARUC I"), followed by *United States Telecom Ass'n v. FCC*, 295 F. 3d 1326, 1329 (D.C. Cir. 1976) ("USTA"). First, the Commission must consider whether Sprint holds itself out to serve all potential users indifferently. *Id*. at 1329, 642. The USTA decision further clarified this prong, by noting that a carrier offering its services only to a defined class of users may still be considered a common carrier if it holds itself out to indiscriminately serve all within that class. *USTA* at 1333.

Extension Corp. and Geneseo Telephone Company; Joint Petition for Approval of Interconnection Agreement between Geneseo Telephone Company and NPCR, Inc. pursuant to 47 U.S.C. § 252.

[8] See *Id* at Section 4.5.

[9] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 993 (1996) (*Local Competition Order*) (subsequent history omitted).

[10] In *Virgin Islands*, the court upheld the FCC's decision to classify AT&T-SSI as a private carrier, finding the FCC's equating a telecommunications carrier with a common carrier to be reasonable. *Virgin Islands* at 922.

Second, the Commission must determine whether Sprint allows customers to transmit information of the customer's own choosing. *Id at 1329, 642.*

Petitioners insist that Sprint is a private carrier. They argue because MCC will be providing the "last mile," MCC is providing services to the public, not Sprint. Sprint, however, asserts that it will provide all public switched telephone network ("PSTN") interconnection, use of existing numbers and all number administration functions, perform the porting function, provision 9-1-1 circuits to the appropriate public safety answering point ("PSAP"), administer 9-1-1 databases and placement of directory listings with ILEC or other directories. *Burt affidavit* at 4. Sprint argues that it indiscriminately offers and provides these services to other cable companies, including Wide Open West, Time Warner Cable, Wave Broadband and others. *Burt affidavit* at 3. Sprint further clarifies this point in James D. Patterson's affidavit.[11] According to Mr. Patterson, Sprint offers the services at issue here indifferently to entities capable of providing their own "last mile" facilities. *Patterson affidavit* at 3. Sprint also insists it meets the second prong of the *NARUC I* test by not altering the content of the voice communications between end users.

The Commission finds that Sprint is a common carrier/telecommunications carrier. While Sprint does not offer its services directly to the public, it does indiscriminately offer its services to a class of users so as to be effectively available to the public, meaning it provides services to those capable of providing their own "last mile" facilities. Thus, Sprint meets the first prong of the *NARUC I* test. Sprint also passes the second prong of the *NARUC I* test by not altering the content of voice communications by end users. Furthermore, the providers of the last mile, in this case MCC, make the service available to anyone in their respective service territories, thus making Sprint's services effectively available to the public.

Petitioners attempt to persuade the Commission to follow the Iowa Public Utilities Board's ("IPUB") interpretation of the *Virgin Islands* decision. IPUB recently dealt with these issues, finding that rural ILECs have no duty to negotiate interconnection with Sprint. *Sprint Communications Company v. Ace Communications Group, et al.,* Docket No. ARB-05-2 (IPUB 2005). IPUB found Sprint only intended to offer its services to its "private business partners," not on a common carrier basis. We respectfully disagree with IPUB's interpretation, based on the above analysis.

Additionally, the Commission notes its previous decision in the *SCC Arbitration Decision*, Docket No. 00-0769 ("SCC"). In *SCC*, the Commission concluded that SCC, a 9-1-1 and emergency services provider, was a common carrier even though it provided its services directly to ILECs, CLECs, certain State agencies, wireless operators, emergency warning systems and emergency roadside assistance programs. The Commission reached this conclusion even though SCC did not directly serve the general public. The key was the fact that SCC made its services indiscriminately available to those who could use its services. *SCC* at 8. In the instant docket, we

[11] Sprint supplied Mr. Patterson's affidavit with its Brief on Exceptions.

conclude that Sprint also makes its services indiscriminately available to those who could use its services.

The Commission also notes that we previously analyzed the *Virgin Islands* decision in *SCC* and found *Virgin Islands* to be factually dissimilar. In *SCC*, the Commission stated AT&T-SSI failed to meet either prong of the *NARUC I* test, as its main service was to "provide hardware, lay cable and lease space to cable consortia, common carriers and large businesses with the capacity to interconnect to its proposed cable on an individualized basis." *SCC* at 8. Essentially, AT&T-SSI was providing bulk capacity. We believe this distinction is relevant to this proceeding as well. Here, Sprint is not offering bulk capacity. It is offering a host of technical functions, including 9-1-1 provisioning services, to any entity that provides its own "last mile" facilities.

At the eleventh hour, Petitioners filed a Motion to Cite Additional Authority based on a decision handed down by the U.S. Supreme Court in *National Cable & Telecommunications Association v. Brand X Internet Services*, Docket No. 04-0277 ("Brand X"). Both Sprint and Staff responded. Given the timing of this decision and the limited opportunity to explore it, the Commission declines to consider the effect, if any, of the *Brand X* decision at this time.

Since we reached the conclusion that Sprint is a telecommunications carrier for purposes of this docket, the Commission must now determine if 251(a) requires Petitioners to negotiate with Sprint. 251(a)(1) requires a telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. §251(a)(1). This section contains no restrictions on who may interconnect with whom. Because there are no restrictions, the Commission finds that Petitioners must negotiate the terms and conditions for interconnection with Sprint.

In addition, it seems that the Commission's findings are greatly serving the public interest. Competition in the telecommunications industry has brought about significant technological advances that few who live in rural areas in Illinois have been able to take advantage of. The type of arrangement between MCC and Sprint potentially allows those in rural areas to benefit from the competitive telecommunications market.

Turning to Petitioners' duties under 251(b)(2) and (5) and whether the Commission should grant a waiver of these duties under 251(f)(2). 251(b)(2) governs a LECs' duty to provide number portability. 251(b)(5) covers a LECs' duty to provide reciprocal compensation. Sprint, through its agreement with MCC, intends to take responsibility for these services for MCC's customers. Petitioners, as LECs, would be obliged to negotiate with Sprint on these two provisions if 251(f)(2) is not applicable. At this time, the Commission does not have sufficient information before it based on the record in this docket to make a determination as to whether Petitioners may receive a waiver of its 251(b)(2) and (5) obligations under 251(f)(2). These issues should be addressed in the newly-initiated arbitration between Sprint and Petitioners in Docket No.

05-0402. The parties are also free to fully brief the *Brand X* decision in Docket No. 05-0402.

Based on the above discussion, the Commission denies Petitioners' request for a declaratory ruling. Any issues not addressed by this decision should be addressed in Docket No. 05-0402. The Commission, in favoring Sprint's position on the right to interconnect with Petitioners, fully expects Sprint to abide by its sworn affidavits, especially its responsibility for all intercarrier compensation arrangements. The Commission also fully expects Sprint to continue to indiscriminately offer these services, as its affidavits state, to those entities that are capable of providing the "last mile."

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, is of the opinion and finds that:

(1) Petitioners provide local exchange telecommunications services as defined in Section 13-204 of the Act;

(2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

(3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;

(4) as rural telephone companies, Petitioners possess a rural exemption under Section 251(f)(1)(A) of the Federal Act from the requirements of Section 251(c) of the Federal Act;

(5) in light of Petitioners' exemption from the requirements of Section 251(c) of the Federal Act, the Commission need not rule on Petitioners' requests regarding its obligations under Section 251(c);

(6) given the manner in which Sprint proposes to serve MCC, Sprint is a telecommunications carrier in this instance with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act;

(7) in light of an insufficient record, declines to make a ruling regarding Petitioners' requests under Section 251(f)(2) of the Federal Act in this Order;

(8) the determinations in these matters are limited to the facts and circumstances presented to, and considered by, the Commission herein, and are without prejudice to any positions, arguments, or evidence that may be advanced in any other proceeding; and

(9) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a "telecommunications carrier," Petitioners have an obligation to negotiate with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P., or any similarly situated entity, under subsections (a) and (b) of Section 251 of the federal Telecommunications Act.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters is this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 13th day of July, 2005.

(SIGNED) EDWARD C. HURLEY

Chairman